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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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DOUG LITTLE - Chairman
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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION
ARIZONA WATER COMPANY FOR AN
INCREASE OF AREA TO BE SERVED AT
CENTRAL HEIGHTS, ARIZONA.

DOCKET NO. W-01445A-14-0305

PROCEDURAL ORDER
(Sets Telephonic Procedural
Conference)

BY THE COMMISSION:

On September 20, 1961, the Arizona Corporation Commission ("Commission") issued Decision No. 33424, granting Arizona Water Company ("AWC" or "Company") a Certificate of Convenience and Necessity ("CC&N") to serve various areas in Gila County, Arizona.

On August 18, 2014, the City of Globe ("Globe" or "City") filed a Petition to Amend Decision No. 33424 Pursuant to Arizona Revised Statutes ("A.R.S.") § 40-252, requesting that the Commission "correct Decision No. 33424" and remove portions of AWC's CC&N that the City states it has provided water service to since the early 1900s.

At the Commission's Staff Meeting on October 16, 2014, the Commissioners voted to reopen Decision No. 33424 pursuant to A.R.S. § 40-252, and instructed the Commission's Hearing Division to conduct further proceedings on the matter. As a party to Decision No. 33424 and pursuant to Arizona Administrative Code ("A.A.C.") R14-3-106(J), AWC is a party to this proceeding.

On October 30, 2014, by Procedural Order, a procedural conference was set for November 10, 2014, to discuss the procedural schedule to be followed in this matter.

On November 5, 2014, the parties filed a Joint Motion to Continue the Procedural Conference scheduled for November 10, 2014.

On November 6, 2014, by Procedural Order, the parties' Motion to Continue was granted and the procedural conference scheduled for November 10, 2014, was continued until January 6, 2015.

On January 2, 2015, AWC filed a Request to Appear Telephonically for the procedural

1 conference.

2 On January 6, 2015, the procedural conference was convened as scheduled. Globe and the
3 Commission's Utilities Division ("Staff") appeared through counsel. AWC appeared telephonically
4 through counsel. During the procedural conference, proposed procedural deadlines, the possibility of
5 settlement, the need for a proposed form of notice, and the need for maps of the disputed areas were
6 discussed.

7 On January 9, 2015, by Procedural Order, a status conference was scheduled to commence on
8 March 9, 2015, and other deadlines were established.

9 On January 16, 2015, AWC filed a Motion to Dismiss Petition to Amend Decision No. 33424
10 Pursuant to A.R.S. § 40-252, asserting, among other things, that the City failed to plead the requisite
11 elements of law for the relief sought, citing to *James P. Paul Water Co. v. Arizona Corp. Comm'n*, 137
12 Ariz. 426, 671 P.2d 404 (1983). AWC requested that the Commission dismiss the City's petition with
13 prejudice for failure to state a claim under Arizona Rules of Civil Procedure Rule 12(b)(6) and the
14 Commission's Rules of Practice.

15 Also on January 16, 2015, Globe filed a Joint Request to Change Procedural Conference Date
16 due to scheduling conflicts among the parties.

17 On January 26, 2015, by Procedural Order, the status conference was rescheduled to March 4,
18 2015.

19 On February 9, 2015, the City filed its Response to AWC's Motion to Dismiss.

20 On February 23, 2015, Staff filed its Staff Report, in which it discussed the evolution of AWC's
21 CC&N and included maps of the disputed areas.

22 Also on February 23, 2015, AWC filed its Reply in Support of Motion to Dismiss Petition to
23 Amend Decision No. 33424 Pursuant to A.R.S. § 40-252.

24 On February 25, 2015, Globe filed a Notice of Filing a Joint Proposed Form of Notice.

25 On March 4, 2015, a status conference was held as scheduled. Globe, AWC, and Staff appeared
26 through counsel. Oral argument was heard on AWC's Motion to Dismiss. At the conclusion of oral
27 arguments, the parties were notified that, due to disputed material facts, a ruling on the Motion to
28 Dismiss would be reserved until an evidentiary hearing was held and all the evidence heard. During

1 the course of oral arguments, counsel for AWC introduced case law that had not been included in
2 AWC's Motion to Dismiss. As a result, Staff and the City were given additional time, until March 27,
3 2015, to file responses to AWC's Motion to Dismiss. Discussions were also held among the parties
4 regarding a procedural schedule for this proceeding and an agreement for a proposed schedule was
5 reached.

6 On March 6, 2015, a Procedural Order was issued scheduling an evidentiary hearing to
7 commence on October 26, 2015, and establishing other procedural deadlines.

8 On March 27, 2015, Staff filed its Response to Motion to Dismiss, arguing that dismissal at this
9 early stage would prevent the development of necessary facts to make a proper determination. The
10 City also filed a supplemental response to the Motion to Dismiss to address the new case law that had
11 been introduced at oral argument.

12 On April 10, 2015, AWC filed its Supplemental Reply Memorandum, in which it continued to
13 assert that dismissal of the City's Petition was appropriate at this time.

14 On April 23, 2015, consistent with the March 6, 2015 Procedural Order, counsel for AWC
15 contacted the Hearing Division and requested a telephonic conference to address ongoing discovery
16 issues. Thereafter, a telephonic status conference was scheduled for April 28, 2015.

17 On April 27, 2015, AWC filed a Motion For An Order Regarding City's Election of A.R.S. §
18 40-252 Theory, requesting an Order be issued finding the City's Petition and requested relief is based
19 on a theory that the Commission made a mistake at the time of granting the CC&N extension because
20 the City was already providing service as opposed to a deletion case which would require satisfaction
21 of *James P. Paul* factors, i.e., a demand for service was made and the utility was unable or unwilling
22 to supply such service. Attached to the Motion were excerpts from the March 4, 2015 oral argument
23 transcript, as well as the City's responses to AWC's second set of data requests.

24 Also on April 27, 2015, Globe docketed AWC's responses to Globe's first set of data requests
25 for discussion at the telephonic status conference.

26 On April 28, 2015, a telephonic status conference was held as scheduled, with the parties
27 appearing through counsel. AWC asserted that the City had not sufficiently responded to AWC's data
28 requests when the City delivered 700-plus pages that were neither Bates stamped nor identified as

1 responsive to any particular data request. AWC requested an Order requiring the City to identify the
2 document(s) pertaining to each of AWC's specific data request(s).

3 On May 7, 2015, AWC docketed a Status Update, attesting that the parties were working
4 together to resolve their discovery disputes.

5 On June 5, 2015, a telephonic status conference was held in which the parties each appeared
6 through counsel and the status of the certification of mailing and publication was discussed.

7 On June 9, 2015, Globe filed its Notice of Filing Affidavit of Mailing Public Notice and
8 Affidavit of Publication.

9 On June 23, 2015, Globe and AWC filed a Request for Extension of Time for Filing Testimony,
10 requesting that all testimony due dates be extended two weeks to allow for ongoing settlement
11 negotiations and stating that Staff did not object to this request.

12 On June 24, 2015, by Procedural Order, Globe and AWC's request for an extension of time was
13 granted.

14 On July 10, 2015, Globe filed its direct testimony of Robert Pate and Ernest Johnson.

15 On July 17, 2015, AWC filed Notices of Deposition for Brent Billingsley, Christopher J.
16 Collopy, Robert Pate, and a representative for Globe.

17 On July 31, 2015, AWC and Globe filed a Stipulated Request for Extension of Time for Filing
18 Testimony, requesting that each of the due dates for the remaining testimony be extended by four days.
19 The filing stated that Staff did not object to the extension.

20 On August 4, 2015, by Procedural Order, the Request for Extension of Time was granted.

21 On August 14, 2015, AWC filed its direct testimony of Fredrick K. Schneider.

22 Also on August 14, 2015, an Agreed Request for Extension of Time for Filing Testimony was
23 filed requesting an additional business day to file William Garfield's testimony and stating the parties
24 did not object to the extension of time.

25 On August 17, 2015, AWC filed its direct testimony of William M. Garfield.

26 On September 24, 2015, Staff filed its Staff Report in the matter.

27 Also on September 24, 2015, Globe filed Notices of Deposition for Fredrick K. Schneider,
28 William M. Garfield, and Fred Rios.

1 On October 9, 2015, Staff filed a Request for Suspension of Procedural Schedule indicating
2 that AWC and Globe stated they are in the midst of settlement discussions. In order to facilitate the
3 settlement process and to avoid unnecessary expense, Staff requested that Globe's filing of Surrebuttal
4 Testimony be suspended, the October 19, 2015, pre-hearing conference be vacated, and the October
5 26, 2015, hearing be convened for public comment only, allowing the remaining time to be used for
6 the parties to continue settlement discussions. Staff further requested that the parties come to the
7 October 26, 2015, settlement discussions with representatives who have the authority to negotiate a
8 settlement, in addition to providing a proposed procedural schedule to be followed as a result of the
9 settlement discussions.

10 On October 13, 2015, AWC filed its Response to Staff's Motion for Suspension of Procedural
11 Schedule, stating AWC agreed with Staff's request to suspend the procedural schedule.

12 On October 14, 2015, by Procedural Order, Staff's Motion for Suspension of Procedural
13 Schedule was granted and the remaining procedural deadlines were vacated.

14 On October 26, 2015, the hearing convened for purposes of taking public comment only.
15 Globe, AWC, and Staff appeared through counsel.

16 On October 26 and 27, 2015, three consumer comments were docketed.

17 On October 30, 2015, a Joint Notice Regarding October 26, 2015 Negotiation Meeting and
18 Proposed Procedural Schedule was filed, requesting that the procedural schedule remain suspended to
19 allow for continued settlement discussions and requesting that AWC and Globe be required to file an
20 updated status regarding settlement efforts on or before December 4, 2015.

21 On November 3, 2015, by Procedural Order, the Joint Notice Regarding October 26, 2015
22 Negotiation Meeting and Proposed Procedural Schedule was granted. The Parties were directed to
23 make a joint filing on or before December 4, 2015, to update the Commission on the status of their
24 settlement discussions, and to provide a proposed procedural schedule for final resolution of the matter.

25 On December 4, 2015, the Parties filed an Updated Report Regarding Parties' Settlement
26 Discussions, stating the matter remained on track for settlement, but that additional details had yet to
27 be negotiated. The Parties requested that the procedural schedule remain suspended and that the Parties
28 be required to file an updated status report and proposed procedural schedule on or before January 8,

1 2016. The filing further indicated that Staff had no objection.

2 On December 8, 2015, by Procedural Order, the Parties' request was granted.

3 On December 23, 2015, AWC filed a Request for Procedural Conference, stating a procedural
4 conference was needed to apprise the Commission on the status of settlement discussions and to discuss
5 necessary steps for final resolution of the matter.

6 On December 28, 2015, by Procedural Order, a procedural conference was scheduled to be held
7 on January 7, 2016.

8 On January 7, 2016 a procedural conference was held as scheduled. Globe, AWC, and Staff
9 appeared through counsel. At the procedural conference, Globe and AWC indicated that a final draft
10 of the settlement agreement was three to four weeks away and subject to approval by City Council, but
11 stated the agreement would be in the best interests of all interested parties by leaving AWC's CC&N
12 intact but allowing Globe to continue to provide service. The Parties agreed to file with Docket Control
13 the completed settlement agreement as soon as possible, in addition to a joint proposed form of notice.

14 On January 8, 2016, a Procedural Order was issued setting a filing date of February 12, 2016
15 for the settlement agreement and proposed form of notice or, if the settlement agreement had not been
16 finalized, a status update.

17 On February 12, 2016, Globe filed a Status Report indicating the parties anticipated a fully
18 executed settlement agreement by February 26, 2016.

19 On February 26, 2016, Globe filed a Status Report and Request to Continue March 21, 2016
20 Settlement Hearing.

21 On March 25, 2016, Globe and AWC filed a Status Report, stating the parties had reached a
22 final form of settlement agreement and would file it with the Commission, along with a proposed form
23 of notice, once signed.

24 On April 20, 2016, Globe and AWC filed a Status Update and Request for Telephonic
25 Procedural Conference, attaching a copy of the signed settlement agreement and a joint proposed form
26 of notice. The filing requested a telephonic procedural conference to discuss procedural steps in order
27 to resolve the matter.

28 Accordingly, it is reasonable and appropriate to schedule a telephonic procedural conference.

1 IT IS THEREFORE ORDERED that a **telephonic procedural conference** in the above-
2 captioned matter shall commence on **May 4, 2016, at 10:00 a.m.**, or as soon thereafter as is practical,
3 by calling: **1-800-689-9374, passcode 415962#**.

4 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
5 31, 38, and 42 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

6 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
7 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
8 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings
9 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for
10 discussion unless counsel has previously been granted permission to withdraw by the Administrative
11 Law Judge or the Commission.

12 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or
13 waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
14 hearing.

15 DATED this 27th day of April, 2016.

16
17 
18 SASHA PATERNOSTER
19 ADMINISTRATIVE LAW JUDGE
20

21 Copies of the foregoing mailed/delivered
22 this 27th day of April, 2016 to:

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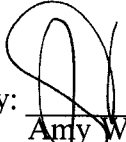
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